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13
14 IN THE UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

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18 UNITED STATES OF AMERICA,
19 Plaintiff,
20 v.
21
22 MICHAEL ERIN VANDEVENTER,
23 Defendant.

24 CASE NO. 1:20-CR-00206-DAD-BAM
25
26 STIPULATION REGARDING EXCLUDABLE
27 TIME PERIODS UNDER SPEEDY TRIAL ACT;
28 AND ORDER
29
30 DATE: August 24, 2022
31 TIME: 1:00 p.m.
32 COURT: Hon. Barbara A. McAuliffe

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1 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
 2 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
 3 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
 4 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 5 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 6 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally
 7 or in writing").

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 9 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 10 justice continuances are excludable only if "the judge granted such continuance on the basis of his
 11 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 12 the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 13 unless "the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 14 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 15 and the defendant in a speedy trial." *Id.*

16 The General Orders exclude delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code
 17 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 18 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 19 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 20 following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 21 recognized that the eruption created "appreciable difficulty" for the trial to proceed. *Id.* at 767-69; *see*
 22 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 23 following the September 11, 2001 terrorist attacks and the resultant public emergency).

24 The coronavirus poses a similar, albeit more enduring, "appreciable difficulty" to the prompt
 25 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a "non-
 26 exhaustive" list of seven factors it found to be "relevant" in considering ends-of-justice Speedy Trial Act
 27 continuances "in the context of the COVID-19 pandemic." *United States v. Olsen*, --- F.3d ---, 2021 WL
 28 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is

1 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked
2 speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a
3 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness
4 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;
5 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;
6 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

7 In light of the foregoing, this Court should consider the following case-specific facts in finding
8 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)
9 (Local Code T4). If continued, this Court should designate a new date for the status conference. *United*
10 *States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
11 "specifically limited in time").

12 STIPULATION

13 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
14 through defendant's counsel of record, hereby stipulate as follows:

15 1. By previous order, this matter was set for status conference on August 24, 2022.

16 2. By this stipulation, defendant now moves to continue the status conference until October
17 26, 2022, and to exclude time between August 24, 2022, and October 26, 2022, under 18 U.S.C.
18 § 3161(h)(7)(A), B(iv) [Local Code T4].

19 3. The parties agree and stipulate, and request that the Court find the following:

20 a) The government has represented that the discovery associated with this case
21 includes investigative reports, lab reports, social media account search returns, cell phone
22 extractions, cell phone location data, and other items. The discovery in the case is voluminous
23 and has been either produced directly to counsel and/or made available for inspection and
24 copying.

25 b) Counsel for defendant desires additional time for discovery review, settlement
26 exploration, consultation with his client, and independent defense investigation. In addition, the
27 defense is making attempts to interview witnesses and needs the additional time to do so as prior
28 attempts have failed and the witnesses needing to be interviewed are crucial to the defendant's

1 decision about whether to pursue a trial or plea agreement.

2 c) Counsel for defendant believes that failure to grant the above-requested
3 continuance would deny him/her the reasonable time necessary for effective preparation, taking
4 into account the exercise of due diligence.

5 d) The government does not object to the continuance.

6 e) In addition to the public health concerns cited by the General Orders and
7 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
8 this case because the defendant is not detained pending trial.

9 f) Based on the above-stated findings, the ends of justice served by continuing the
10 case as requested outweigh the interest of the public and the defendant in a trial within the
11 original date prescribed by the Speedy Trial Act.

12 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
13 et seq., within which trial must commence, the time period of August 24, 2022 to October 26,
14 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
15 T4] because it results from a continuance granted by the Court at defendant's request on the basis
16 of the Court's finding that the ends of justice served by taking such action outweigh the best
17 interest of the public and the defendant in a speedy trial.

18 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
19 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
20 must commence.

21 IT IS SO STIPULATED.

22
23 Dated: August 16, 2022

24 PHILLIP A. TALBERT
United States Attorney

25 /s/ JUSTIN J. GILIO
26 JUSTIN J. GILIO
27 Assistant United States Attorney

1 Dated: August 16, 2022

/s/ Richard Oberto

2 Richard Oberto
3 Counsel for Defendant
4 MICHAEL ERIN
5 VANDEVENTER

6 **ORDER**

7 IT IS SO ORDERED that the status conference is continued from August 24, 2022, to **October**
8 **26, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** Time is excluded pursuant to
9 18 U.S.C. § 3161(h)(7)(A), B(iv). The Court intends to set a trial date at the next status conference. If the
10 parties do not resolve the case in advance of the next status conference, they shall be prepared to set a trial
11 date at the status conference hearing.

12 IT IS SO ORDERED.

13 Dated: August 17, 2022

14 /s/ Barbara A. McAuliffe

15 UNITED STATES MAGISTRATE JUDGE